Dato' Ramesh a/l Rajaratham v Datin Zaleha bt Abd Rahman & Ors (representatives of Dato' Shahrani bin Abdullah, deceased)

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO 29–5017–09 OF 2012
ABU BAKAR JC
6 AUGUST 2013

Civil Procedure — Judgment and orders — Garnishment order — Judgment debtor ('JD') ordered to return monies obtained — Failure to return — JD obtained purported stay of execution — Judgment creditor ('JC') disputed stay of execution — JC filed bankruptcy proceedings — Whether stay obtained merely of other proceedings at High Court and not for return of monies — Administrators failed to extract letter of administration — Whether JC lack or devoid capacity to pursue bankruptcy proceeding — Whether purported stay of execution barred or prohibited JC from pursuing bankruptcy proceeding

This was an appeal against the decision of the senior assistant registrar who had dismissed the application of the judgment debtor ('JD') to set aside the bankruptcy notice ('BN') issued by the judgment creditors ('JC'). The genesis of the BN began when the JD garnished monies through two garnishment orders by the High Court against the JC. The said decision was set aside on appeal by the Court of Appeal on 4 May 2012. The JD was ordered to return whatever monies obtained through that orders of the High Court to the JC who were all the administratrix and administrators of the estate of the deceased, one Dato' Shahrani bin Abdullah. The JD subsequently on 30 May 2012, obtained a purported stay of execution order from a different coram of the Court of Appeal against the order made. This purported stay of execution order was disputed by the JC as they asserted, what was obtained by the JD was merely a stay of other proceedings at the High Court and therefore not a stay of execution that affected the order for the return of the monies. Despite this purported stay of execution order, the JC proceeded to issue the BN against the JD after attempts were made to recover the monies ordered to be returned. It was also relevant to note that the JC only extracted the letter of administration ('LA') on 28 November 2012. The following two issues were raised in this appeal namely: (a) whether the JC had locus standi to issue the BN and proceed thereafter with bankruptcy proceeding; and (b) whether the purported stay of execution order made by the Court of Appeal on 30 May 2012 bars or prohibits them from issuing the BN.

Held, dismissing the appeal with costs of RM8,000:

(1) The law as it stands now quite clearly demonstrates that it was no longer

plain that whenever the administrators failed to get or extract the LA, the result will always mean that they do not have locus standi to pursue their court actions. Further, special circumstances now is a factor that ought to be considered to rule, that it is not always fatal that the LA was not applied, obtained or extracted before action is filed in court by the administrators or beneficiaries (see paras 46 & 48).

(2) Taking note of *Al Rashidy bin Kassim & Ors v Rosman bin Roslan* [2007] 4 MLJ 297 and *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 on the extent of special circumstances, there are special circumstances in the present appeal for the following reasons; (a) the BN refers to the order of the Court of Appeal on 4 May 2012 which merely directs monies to be returned to the JC; (b) these monies did not arise from a fresh action requiring the court to ascertain liability; (c) these monies were the JC's monies in the first place and did not arise from a debt. The cumulative effects of these special circumstances, work in favour of the JC in that their extraction of the LA only after issuing the BN was not fatal. Furthermore, to require and insist on the JC to obtain and extract the LA before they bring the JD to court to recover their own monies, under the circumstances of this case, be missing the wood for the trees (see paras 52–53 & 55).

(3) The order of 30 May 2012 by the Court of Appeal was not a stay of execution of the order on 4 May 2012 that monies be returned to the JC. The former was explicit and without uncertain terms, an order merely to stay existing proceedings at the High Court which incidentally are of no concern either to the parties nor the court for the purpose of this appeal. In fact, when the Court of Appeal gave the order on 30 May 2012, it was of the view that it would not grant the JD a stay of execution as requested but only a stay of existing proceedings at the High Court. More importantly, when the JC expressed that the order was merely an order to stay proceedings at the High Court and therefore would mean monies still must be returned, the JD had agreed to this assertion (see paras 66–69).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan timbalan kanan pendaftar yang menolak permohonan penghutang penghakiman ('PP') untuk mengetepikan notis bankrap ('NB') yang dikeluarkan oleh pemiutang penghakiman. Asal usul NB bermula apabila PP menggarnis wang melalui dua perintah garnisan oleh Mahkamah Tinggi terhadap PK. Keputusan tersebut diketepikan atas rayuan oleh Mahkamah Rayuan pada 4 Mei 2012. PP diperintahkan untuk memulangkan apa-apa wang yang diperolehi melalui perintah-perintah Mahkamah Tinggi kepada PK yang mana kesemuanya adalah pentadbirani dan pentadbir-pentadbir estet si mati, seorang yang bernama Dato' Shahrani bin Abdullah. PP kemudiannya pada 30 Mei 2012, memperolehi perintah

penangguhan pelaksanaan daripada koram yang berlainan Mahkamah Rayuan terhadap perintah yang dibuat. Perintah penangguhan pelaksananan yang dimaksudkan ini dipertikaikan oleh PK memandangkan mereka menegaskan, apa yang diperolehi oleh PP hanyalah penangguhan prosiding lain di Mahkamah Tinggi dan oleh itu bukan penangguhan pelaksanaan yang menjejaskan perintah untuk pemulangan wang tersebut. Meskipun terdapat perintah penangguhan pelaksanaan, PK meneruskan mengeluarkan NB terhadap PP selepas percubaan dibuat untuk mendapatkan wang yang diperintahkan untuk dipulangkan. Adalah juga relevan untuk mengambil perhatian bahawa PK hanya mendapatkan surat pentadbiran ('SP') pada 28 November 2012. Dua isu berikutan dibangkitkan dalam rayuan ini iaitu: (a) sama ada PK mempunyai locus standi untuk mengeluarkan NB dan meneruskan kemudiannya dengan prosiding kebankrapan; dan (b) sama ada perintah penangguhan pelaksanaan yang dibuat oleh Mahkamah Rayuan pada 30 Mei 2012 menghalang atau melarang mereka daripada mengeluarkan NB.

Diputuskan, menolak rayuan dengan kos sebanyak RM80,000:

(1) Undang-undang sekarang secara jelas menunjukkan bahawa tidak lagi ketara apabila pentadbir-pentadbir gagal untuk mendapatkan atau mengeluarkan SP, keputusan akan selalu bermaksud yang mereka tidak mempunyai locus standi untuk meneruskan tindakan mahkamah mereka. Selanjutnya, keadaan khusus adalah faktor yang perlu dipertimbangkan untuk memerintahkan, bahawa adalah tidak kritikal jika SP tidak dipohon, diperolehi atau dikeluarkan sebelum tindakan difailkan di mahkamah oleh pentadbir-pentadbir atau benefisiari-benefisiari (lihat perenggan 46 & 48).

(2) Mengambil kira kes *Al Rashidy bin Kassim & Ors v Rosman bin Roslan* [2007] 4 MLJ 297 dan kes *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 atas lanjutan keadaan khusus, terdapat keadaan khusus dalam rayuan ini untuk alasan berikut; (a) NB merujuk kepada perintah Mahkamah Rayuan pada 4 Mei 2012 yang hanya mengarahkan wang dikembalikan kepada PK; (b) wang ini tidak berbangkit daripada tindakan hutang. Efek kumulatif keadaan khusus ini, berpihak PK di mana pengeluaran SP mereka hanya selepas mengeluarkan NB adalah tidak kritikal. Selanjutnya untuk mengkehendaki dan mendesak PK untuk memperolehi SP sebelum mereka membawa PP ke mahkamah untuk mendapatkan semula wang mereka, dalam keadaan kes ini, hanya menumpukan pada keadaan yang tidak relevan (lihat perenggan 52–53 & 55).

(3) Perintah 30 Mei 2012 oleh Mahkamah Rayuan bukan perintah penangguhan pelaksanaan pada 4 Mei 2012 bahawa wang dikembalikan semula kepada PK. Perintah 30 Mei 2012 adalah jelas dan dengan bukan tanpa terma yang tidak tentu, perintah hanya untuk menangguhkan

prosiding sedia ada di Mahkamah Tinggi yang mana pada mulanya tidak berkaitan sama ada kepada pihak-pihak atau pun kepada mahkamah bagi tujuan rayuan ini. Sebenarnya, apabila Mahkamah Rayuan memberi perintah pada 30 Mei 2012, ia berpendapat bahawa ia tidak akan memberikan PP penangguhan pelaksanaan seperti yang dipohon tetapi hanya penangguhan prosiding sedia ada di Mahkamah Tinggi. Lebih penting lagi apabila PK menyatakan bahawa perintah hanya perintah penangguhan prosing di Mahkamah Tinggi dan oleh itu akan bermaksud wang mesti dikembalikan, PP telah bersetuju kepada desakan ini (lihat perenggan 66–69).]

Notes

For a case on garnishment order, see 2(3) *Mallal's Digest* (4th Ed, 2012 Reissue) para 4897.

Cases referred to

Al Rashidy bin Kassim & Ors v Rosman bin Roslan [2007] 4 MLJ 297; [2007] 3 CLJ 361, FC (refd)
Ang Hoi Yin v Sim Sie Hau [1969] 2 MLJ 3 (refd)
Chia Foon Sian & Anor v Lam Chew Fah & Anor [1955] 1 MLJ 203 (refd)
Chia Teck Liang v Tan Soo Khiang [1936] 1 MLJ 148 (refd)
Government of Malaysia v Datuk Haji Kadir Mohamad Mastan and another application [1993] 3 MLJ 514, HC (refd)
Hj Ali Omar & Anor v Lim Kian Lee & Ors [2002] 8 CLJ 443, HC (refd)
Ingall v Moran [1944] KB 160, CA (refd)
Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257, FC (refd)
Mohamed Hanif & Anor v Chin Ah Bah [1974] 1 MLJ 128 (refd)
Ng Thau Shing v George Justine & other cases [2005] 6 CLJ 80, HC (refd)
Ooi Jim & Anor v Ai Eit & Ors [1977] 2 MLJ 105, FC (refd)
P Govindasamy Pillay & Sons v Lok Seng Chai & Ors [1961] 1 MLJ 89 (refd)
Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy [1996] 1 SLR 586, HC (refd)

Sandosh Anandan (Sandosh Anandan) for the appellant.
Allan Wong (Alex Lim with him) (Zain Megat & Murad) for the respondents.

Abu Bakar JC:

THE BACKGROUND

[1] This is an appeal to the judge in chambers heard on 11 July 2013 after full oral arguments against the decision of the learned senior assistant registrar ('SAR') delivered on 18 April 2013 whereby she had dismissed the application (encl 12) of the judgment debtor ('JD') by way of summons in chambers to set

aside the bankruptcy notice ('BN') issued by the judgment creditors ('JC'). A

THE FACTS

[2] A narration of the material facts that brought about the BN in the first place is appropriate here to better appreciate the issues involved and the arguments of both parties in this appeal. B

[3] The genesis of the BN begins when the JD garnished monies amounting to RM2,026,536.38 through two garnishment orders by the High Court dated 19 October 2011 against the JC. C

[4] Aggrieved by the decision of the High Court, the JC went before the Court of Appeal and the same having heard both parties, set aside the High Court's orders on 4 May 2012 and ordered the JD to return whatever monies obtained through that orders of the High Court to the JC who are all the administratrix and administrators of the estate of the deceased, one Dato' Shahrani bin Abdullah. D

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[5] The JD subsequently on 30 May 2012 obtained a purported stay of execution order from a different coram of the Court of Appeal against the order made on 4 May 2012.

[6] This purported stay of execution order is very much disputed by the JC as they assert what was obtained by the JD was merely a stay of other proceedings at the High Court and therefore not a stay of execution that affects the order on 4 May 2012 for the return of the monies. F

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[7] Despite this purported stay of execution order, the JC proceeded to issue the BN on 4 September 2012 against the JD after attempts were made to recover the monies ordered to be returned.

[8] It is relevant also to note that the JC only extracted the letter of administration ('LA') on 28 November 2012. H

THE AGREEMENT OF BOTH PARTIES

[9] At the end of oral submissions by both parties, I had intimated that to my mind there are only two issues to be decided by the court in this appeal namely: I

(a) whether the JC had locus standi to issue the BN and proceed thereafter with bankruptcy proceeding; and

A (b) whether the purported stay of execution order made by the Court of Appeal on 30 May 2012 bars or prohibits them from doing the same.

[10] Both the parties were in agreement with the court that indeed these are the only issues to be decided and accordingly this agreement was recorded in court.

FIRST ISSUE — WHETHER THE JC HAD LOCUS STANDI AND SUBMISSION OF JD

[11] The thrust of the arguments of the JD in this appeal regarding this issue is that the JC lack or are devoid of any capacity to pursue bankruptcy proceeding (including the issuance of the BN) against the former because at the time they commenced the proceeding by filing the BN on 4 September 2012, the LA that empowers their action has not been extracted as it was only extracted on 28 November 2012.

[12] JD submits that only after the LA is extracted would the JC be in a position and has the right in law to initiate bankruptcy proceeding including the issuance of the BN.

[13] A case law that was highlighted in support of the submission that the JC would not be able to move the court without the LA is the case of *Chia Teck Liang v Tan Soo Khiang* [1936] 1 MLJ 148 where it was decided that an administrator cannot be sued for repayment of a debt owed by a deceased before LA is granted under seal.

[14] JD argues that not only must the order be made by court to issue the LA but additionally until the LA is extracted, the administrators are not clothed with authority to act for the deceased either in pursuing or defending any court action.

[15] The English *locus classicus* of *Ingall v Moran* [1944] KB 160 was also cited by the JD and in this case a writ was issued in respect of a claim by the plaintiff who is the father of the deceased acting as administrator to the estate about two months before the LA was taken.

[16] In this case Goddard LJ ruling against the plaintiff opined:

> The writ was endorsed as being issued by the plaintiff in a representative capacity at a time he had no representative capacity and therefore the writ could have been struck out.

[17] In this same case Scott LJ found:

> As the writ was issued on September 17, 1942 and there was no grant till November, it follows, necessarily that at the time of writ issued the plaintiff had no shadow of title to his son's surviving chose in action, in respect of which he purported to issue a writ falsely (although no doubt quite innocently) alleging that he issued it as administrator.

[18] The next case law cited by the JD is the Singapore's case of *Chia Foon Sian & Anor v Lam Chew Fah & Anor* [1955] 1 MLJ 203 which decided that the legal authority of an administrator is only acquired on the grant of the LA.

[19] JD also brought to the attention of this court the case of *P Govindasamy Pillay & Sons v Lok Seng Chai & Ors* [1961] 1 MLJ 89 which agrees with *Ingall* and held that a person cannot be sued in a representative capacity despite obtaining the LA when the same has not been extracted.

[20] The case also decided that status is conferred by the grant under seal and not the order of the court that the grant should be issued.

[21] Another case quoted by the JD in support of the submission in this appeal to set aside the BN is the case of *Ang Hoi Yin v Sim Sie Hau* [1969] 2 MLJ 3 which also followed *Ingall* and where it was decided that the plaintiff had no power to sue as administratrix as she had not extracted the grant of the LA and therefore the suit was considered a nullity and was set aside.

[22] JD also forwarded another case that quoted with approval *Ingall* in *Mohamed Hanif & Anor v Chin Ah Bah* [1974] 1 MLJ 128 where the writ was taken by two persons purported to be administrators but there was no indorsement or averment that they had been granted the LA or extracted the same before the issuance of the writ.

[23] As a consequence, the High Court in this case ordered the setting aside of the writ and all subsequent proceedings.

[24] The JD also submitted the Singapore's High Court decision of *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 1 SLR 586 where upon the death of the deceased who had two wives, the plaintiff being the first wife as administratrix had sought, inter alia, declaration that certain properties in the name of the defendant being the second wife, in fact belong to the deceased and she was holding it in trust for the deceased.

[25] The plaintiff had commenced proceeding on 30 August 1995 and

A although her petition for LA was granted on 11 August 1995, the LA has yet to be extracted when she commenced the action in court.

[26] The defendant applied to dismiss the plaintiff's claim on the ground that a person could only be an administrator upon the extraction of the LA which the plaintiff failed to do.

[27] The court agreed with the defendant in that the plaintiff lacks the capacity to sue as she did not extract the LA before action was filed in court and therefore struck out the plaintiff's writ and statement of claim.

[28] Following the cases above, JD argued not only must the LA be applied and granted but it must also be extracted from the courts and not only one has no right to sue as administrator without the extraction of the LA but one also cannot be sued as administrator if he has not extracted the same (see *P Govindasamy Pillay*.)

[29] The upshot to the submission on these cases by the JD is that the JC having issued the BN roughly two months ahead of the extraction of the LA, do not in law have the capacity nor locus standi to commence bankruptcy proceeding or any court proceeding for that matter.

THE JC SUBMISSION IN REPLY ON THE FIRST ISSUE

[30] At the outset of the submission in reply, JC pointed out that they are in agreement to all the cases that have been cited by the JD and these cases were good law then but maintained the law has since the cases were decided, evolved for the benefit of the administrators as now it is no longer required that the LA be extracted every time before any action in court is filed and even pointed out that in the case of *Wong Moy*, the Court of Appeal of Singapore has overruled the decision of the High Court.

[31] JC further submitted that as it stands now, the law leans more towards the administrator as what is taken as consideration by the courts is whether there are any special circumstances existing to justify the LA not being extracted.

[32] They submitted the case that supports their contention is the Federal Court's case of *Al Rashidy bin Kassim & Ors v Rosman bin Roslan* [2007] 4 MLJ 297; [2007] 3 CLJ 361 where the appellants being beneficiaries of an estate without obtaining the LA sought to regain part of a piece of land belonging to the deceased because of alleged fraud committed by the respondent.

[33] The respondent contended that the appellants do not have locus standi in their claim for they had not obtained the LA before initiating their court action.

[34] In deciding in favour of the appellants, the Federal Court took into account the Singapore's Court of Appeal's decision in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR 398 which as pointed out by the JC in the present appeal, had reversed the High Court's decision.

[35] The Federal Court too is of the view as the Singapore's Court of Appeal in the above case, that what is termed as 'special circumstances' ought to be considered in deciding whether a beneficiary could still proceed to take court action when the LA has not been obtained.

[36] Further in delivering the judgment of the court, Arifin Zakaria FCJ (as he then was) explained the scope of special circumstances to say:

> We agree with the view expressed by the Singapore Court of Appeal in that special circumstances should not be confined solely to cases where the personal representative had defaulted in recovering the property of the estate. We are of the view that all the circumstances of the case ought to be considered by the court in arriving at a just result.

[37] The JC too alerted the court for this appeal the Federal Court's judgment in the case of *Ooi Jim & Anor v Ai Eit & Ors* [1977] 2 MLJ 105 another case where the LA was not obtained when a declaration of status was sought and in delivering judgment Gill CJ (Malaya) (as he then was) said:

> The question of taking out letters of administration would only arise when it became necessary for the first plaintiff to claim her share in the estate of the said intestate.

[38] The JC also argued in support of the Singapore's Court of Appeal decision in *Wong Moy* and in this case, as stated earlier the Singapore's Court of Appeal reversed the decision of the High Court in considering whether special circumstances exist to assist administrators when they did not extract the LA before filing court action and in explaining special circumstances and the decision of the High Court on the same point at held two states:

> The judge had taken too restrictive a view of the concept of special circumstances. Special circumstances were not confined solely to cases where the personal representative had defaulted in acting to recover the property. All the circumstances

A of the case should be considered, including the nature of the assets, the position of the personal representative and the reason for the default of the personal representative.

B **[39]** The JC also submitted the case of *Hj Ali Omar & Anor v Lim Kian Lee & Ors* [2002] 8 CLJ 443 where the decision of the Federal Court in *Ooi Jim* was followed and as the salient point to the Federal Court's judgment has already been explained earlier, it is no longer necessary to elaborate on the same again at this stage.

C **[40]** The last case submitted by the JC to oppose this appeal on this issue is the case of *Ng Thau Shing v George Justine & other cases* [2005] 6 CLJ 80 where preliminary objection was raised that a party to the suit has no local standi in commencing action when the LA has not be issued.

D **[41]** On this preliminary objection at held 6 it is stated:

> Concerning the preliminary objection in the third action, it is well entrenched that technicalities should not come in the way for substantial justice to be done.

E **[42]** This case also cited with approval *Ooi Jim* and in delivering judgment Richard Malanjum J (as he then was) ruled:

> Thus I am inclined to follow *Ooi Jim* and rule that Ungot had the locus standi to commence the action … accordingly I find no merit in this issue of locus standi.

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THE DECISION ON THE FIRST ISSUE

[43] One would notice that the cases cited by the JD in this appeal on this G issue are decisions decided quite some time ago except the decision of the High Court in *Wong Moy* which is not disputed to be reversed by the Court of Appeal of Singapore.

[44] Lest it be suggested here that these cases are no longer relevant, I must H state at the outset that these judgments deserve the greatest respect under all circumstances.

[45] However with the passage of time, as seen from the cases submitted by the JC, I would be inclined to think that there has been a shift in judicial I reasoning in favouring a position that the issuance and extraction of the LA for administrators or beneficiaries before court proceedings are not always necessary.

[46] The law as it stands now as reflected from those cases, quite clearly

demonstrates that it is no longer plain that whenever the administrators failed to get or extract the LA, the result will always mean that they do not have locus standi to pursue their court actions.

[47] These cases as elaborated earlier would be the court's authorities to find in favour of the JC on this issue.

[48] Further, special circumstances as can be seen from the cases cited by the JC now is a factor that ought to be considered to rule that it is not always fatal that the LA was not applied, obtained or extracted before action is filed in court by the administrators or beneficiaries.

[49] I am also guided not only by the cases argued in this appeal as to the scope of 'special circumstances' but to the Federal Court's case of *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257, a case not submitted by either party to this appeal.

[50] I am fully aware that *Kosma* deals with special circumstances in relation to application for stay of execution, nonetheless it interprets the meaning of that words and it is instructive to note the judgment of Augustine Paul JCA (as he then was) in this case when he quoted with approval the judgment in *Government of Malaysia v Datuk Haji Kadir Mohamad Mastan and another application* [1993] 3 MLJ 514 where Ian Chin JC (as he then was) said:

> An attempt was made to define special circumstances by Raja Azlan Shah (as His Majesty then was) in the case of *Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86, viz
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> > Special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances. It must be something exceptional in character, something that exceeds or excels in some way that which is usual or common.

[51] Ian Chin JC (as he then was) went on to say:

> The definition only serves to emphasise the fact that there are myriad circumstances that could constitute special circumstances with each case depending on its own facts. I am of the opinion that the list of factors constituting special circumstances is infinite and could grow with time.

[52] Taking note of *Al Rashidy bin Kassim* and *Kosma* on the extent of special circumstances, I agree with the JC that there are special circumstances in the

present appeal for the following reasons:

(a) the BN refers to the order of the Court of Appeal on 4 May 2012 which merely directs monies to be returned to the JC;

(b) these monies did not arise from fresh action requiring court to ascertain liability; and

(c) these monies were the JC monies in the first place and did not arise from a debt.

[53] The cumulative effects of these special circumstances, in my view work in favour of the JC in that their extraction of the LA only after issuing the BN is not fatal.

[54] Also to be noted is the decision of *Ng Thau Shing* that emphasises the need to look at the whole case in achieving justice as opposed to labouring on technicalities to frustrate an action for want of a document although that document may be needed at best to clarify the position of the holder of such document.

[55] This is consistent with the facts of the present appeal, where the JC are merely seeking the return of their monies from the JD as directed by the Court of Appeal on 4 May 2012. To require and insist on them to obtain and extract the LA before they bring the JD to court to recover their own monies, would with respect to say the least, under the circumstances of this case be missing the wood for the trees.

[56] After all the cases cited by the JC, which are comparatively recent to the cases forwarded by the JD, support their contention that it is no longer mandatory for administrators to extract LA each time a suit is filed.

[57] Accordingly, I find the JC do have locus standi to issue the BN and decide the first issue in their favour.

SECOND ISSUE — WHETHER THE PURPORTED STAY OF EXECUTION ORDER MADE BY THE COURT OF APPEAL ON 30 MAY 2012 PROHIBITS THE JC FROM FILING THE BN AND SUBMISSION OF THE JD

[58] JD submitted that as the Court of Appeal had on 30 May 2012 stayed the execution of the order made by the Court of Appeal on 4 May 2012 on the return of the money to the JC, it was wrong for the latter to issue the BN and such issuance was invalid and of no effect.

[59] The relevant words of the order on 30 May 2012 in favour of the JD reads:

> … Responden pertama diberikan penggantungan perlaksanaan perintah bertarikh 4 Mei 2012 hanya setakat mana ia berkenaan dengan prosiding-prosiding sedia ada di Mahkamah Tinggi sementara menunggu perlupusan permohonan responden pertama untuk kebenaran merayu ke Mahkamah Persekutuan dan jika permohonan tersebut dibenarkan, penggantungan prosiding-prosiding sedia ada di Mahkamah Tinggi diberikan sementara menunggu perlupusan rayuan di Mahkamah Persekutuan …

THE SUBMISSION IN REPLY ON THE SECOND ISSUE

[60] JC argued that the court only needs to look at the operative words of the order of 30 May 2012 by the Court of Appeal as shown above to realise that the order made is in no way a stay of execution order against the order of the same court on 4 May 2012 to return monies due from the JD.

[61] According to the JC what is ordered to be stayed are merely existing proceedings pending at the High Court and under no circumstances this was a stay of execution order that will affect the order to return monies to them.

[62] Further, JC submitted when the JD applied for a stay of execution order against the order of 4 May 2012 for the return of the monies, prayer 1 of that application (exh SS2 of Shafiz bin Shahrani's affidavit affirmed on 7 February 2013) was worded much more definitive and specific in that it had unequivocally requested for stay of execution order against the order of 4 May 2012 and the prayer reads:

> Bahawa responden pertama hendaklah diberikan satu penggantungan perlaksanaan Perintah Mahkamah Rayuan bertarikh 4 Mei 2012.

[63] However after arguments were heard on that application, the prayer requested was denied by the Court of Appeal and instead the court gave only an order to stay proceedings at the High Court as seen in the order of 30 May 2012 above.

[64] That in effect according to the JC showed quite clearly, had the Court of Appeal been minded to grant a stay of execution, it would have allowed prayer 1 of the application as requested instead of making amendments as now seen in the wordings of the order dated 30 May 2013.

[65] In essence, JC submitted that since there was no stay of execution order prohibiting the return of the monies as ordered on 4 May 2012 by the Court of

Appeal, they were at liberty to issue the BN and the same cannot be said to be invalid or in violation of any court orders.

THE DECISION ON THE SECOND ISSUE

[66] Perusing and studying the crucial words of the order of 30 May 2012 by the Court of Appeal, I am convinced that the same is not a stay of execution of the order on 4 May 2012 that monies be returned to the JC.

[67] The former is explicit and without uncertain terms, an order merely to stay existing proceedings at the High Court which incidentally are of no concerned neither to the parties nor the court for the purpose of this appeal.

[68] I also agree with the JC that when the Court of Appeal gave the order on 30 May 2012, it was of the view that it would not grant the JD a stay of execution as requested but only a stay of existing proceedings at the High Court.

[69] More importantly, when the JC expressed that the order is merely an order to stay proceedings at the High Court and therefore would mean monies still must be returned to the same, the JD had agreed to this assertion (para 5.2 of Shafiz bin Shahrani's affidavit affirmed on 7 February 2013 for JC and para 10 of JD's affidavit in reply affirmed on 21 February 2013 respectively).

[70] The court can only look and evaluate the facts as presented by parties in their affidavits and in this appeal as the JD had admitted the effect of the order as stated by the JC, it would be wrong for the court not to take into account this admission which is sworn and affirmed in an affidavit.

[71] Thus the second issue is also decided in favour of the JC as I find the order of 30 May 2012 does not prohibit a BN being filed.

THE CONCLUSION

[72] The law on whether an administrator needs to be equipped with a LA before initiating court actions has over the years change for the benefit of the same depending on the facts of each particular case and are no longer rigid as before for me to find that the JC are entitled to issue the BN and thereafter to proceed with bankruptcy proceedings if they so wish.

[73] Also a court order is only as good as the terms in it and hence after considering the Court of Appeal's order dated 30 May 2012, I do not find it to

be a stay of execution order that will hinder the return of the monies to the JC as ordered by the same court on 4 May 2012.

[74] In any event the JD himself had admitted that the order of 30 May 2012 still has the effect that he is required to return the monies to the JC.

[75] I would therefore dismiss this appeal with RM8,000 awarded to the JC as costs and affirm the decision of the learned SAR.

Appeal dismissed with costs of RM8,000 awarded to JC.

Reported by Ashgar Ali Ali Mohamed